

IN SENATE OF THE UNITED STATES.

FEBRUARY 17, 1846.

Submitted, and ordered to be printed.

Mr. BREESE made the following

REPORT :

[To accompany bill S. No. 86.]

*The Committee on the Judiciary have had under consideration the petition and papers accompanying it of Joseph Chaires, executor of Benjamin Chaires, deceased, Gad Humphreys, and Pedro Miranda, of the State of Florida, and respectfully ask leave to report :*

That on the 20th of March, 1817, it appears there were granted to Joseph de la Maza Arredondo, by Joseph Coppinger, the Spanish governor of East Florida, 20,000 acres of land in the Alachua country, about eighty miles distant from the city of St. Augustine, "at a place known as 'Big Hammock,' about twenty miles from the river Suwannee, westward about sixty miles from the St. John's river."

On the 14th of October, 1819, one Andres Burgevin, a surveyor, surveyed, under this grant, a piece of land containing 20,000 acres, situated on both margins of a creek known as Alligator creek, commencing a little above the head of said creek, embracing an Indian town, distant about eighty miles from the post at Buenavista, and about forty miles to the northwest of Payne's town, disregarding, it seems, all the calls in the grant.

The petitioners, claiming under Arredondo, impleaded the United States in the proper court of Florida, in 1834, in a suit commenced by petition, under the provisions of the act of Congress of the 23d of May, 1828, and, after trial, obtained a decree in favor of the validity of the claim, which was affirmed on error to the Supreme Court of the United States.

It appears from an inspection of the record and proceedings in the cause, that, besides the survey of Andres Burgevin, there was admitted in evidence, on behalf of the claimants, a subsequent survey made in 1824 by Joshua A. Coffee, in conformity to the calls of the grant.

The court in Florida adjudge and decree the claim to be valid, and confirm it "to the extent, for the number of acres, and at the place as in the grant for the said land to Jose de la Maza Arredondo," and add, "as in the certificate and plat of the same made by Don Andres Burgevin, and dated the 14th September, 1819," and describing the land as in Burgevin's survey, instead of that made by Coffee, conformable to the calls of the grant. The surveyor of the United States, in attempting to execute the mandate of the Supreme Court, which followed this decree, discovered that Burgevin's

survey did not conform to the grant or royal title, and that the land described by him in his certificate of survey could not be found at the place designated in the grant. He, therefore, declined to make a survey according to the terms of the grant and Coffee's survey, by which means the claimants have been deprived of the benefit of the decree.

An effort was made, by motion to the court of Florida, to correct this most obvious mistake, thus brought to the notice of the claimants by the United States surveyor, but without success, the time for making such motions having, by the rules and practice of that court, expired.

The affidavit of Coffee states that, in 1824, upon the application of Jose de la Maza Arredondo, he surveyed for him a Spanish grant made to him in the Alachua country, at a place known as Big Hammock or Big Swamp, (being called by both names,) for 20,000 acres of land, in conformity to the grant executed by the Spanish governor Coppinger, bearing date the 20th of March, 1817; that the lands are in the county of Alachua, about 28 miles nearly south from Payne's town, on the Big prairie, and are the only lands he ever saw, or of which he has any knowledge, that conform to the calls of the grant; and that there is no other place, so far as he knows or believes, which was ever called or known by the name of *Big Hammock*, or *Big Swamp*; that they lie about 80 miles from St. Augustine, and about 60 miles from Picolata, on the river St. John's, and that he made a plat of the survey, and delivered it to Arredondo.

The attention of the court, when this case was before it for adjudication, was directed rather to the validity of the grant, it is presumed, than to its location by survey, and the contradiction between the description of the calls in the grant and the actual survey by Burgevin may well have escaped its observation. The court decides the grant to be a valid one "to the extent, for the number of acres, and at the place as in the grant for the said land to Jose de la Maza Arredondo," to which Coffee's survey conforms, and Burgevin's does not. When a grant and survey are contradictory, the latter must yield to the former—the grant must control the survey. The deposition of Coffee fully shows that his survey is conformable to the calls in the grant.

The petitioners pray that a survey may be made of the grant by the surveyor general of Florida, according to the calls in the grant and Coffee's survey, and that a patent may issue to them.

A manifest mistake having been committed in assuming the survey of Burgevin to be the true survey, the committee are of opinion, without deciding the right of the petitioners under Arredondo, that their prayer is reasonable, and accordingly report a bill.